

Amendments to House Bill No. 514
3rd Reading Copy

Requested by Representative Mary Caferro

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 26, 2007 (4:21pm)

1. Title, line 10.

Following: "IS"

Insert: "RECEIVING SERVICES FROM A YOUTH CARE FACILITY OR IS"

2. Title, line 11.

Strike: "A FOSTER HOME, A YOUTH GROUP HOME,"

3. Page 1, line 30 through page 2, line 1.

Following: "RECEIVING" on line 30

Strike: remainder of line 30 through "ARE" on page 2, line 1

Insert: "services from a youth care facility, as"

4. Page 2, line 4 through line 5.

Following: "THE" on line 4

Strike: remainder of line 4 through "HOME" on line 5

Insert: "youth care facility"

5. Page 2, line 18.

Following: "IS"

Strike: "A RESIDENT OF A YOUTH FOSTER HOME OR A YOUTH GROUP HOME"

Insert: "receiving services from a youth care facility"

6. Page 2, line 19.

Following: "or"

Strike: "and"

Insert: "or"

Following: "service"

Strike: ", OR HOME"

7. Page 3, line 8 through line 9.

Following: "RECEIVING" on line 8

Strike: remainder of line 8 through "ARE" on line 9

Insert: "services from a youth care facility, as"

8. Page 3, line 12 through line 13.

Following: "THE" on line 12

Strike: remainder of line 12 through "SERVICE" on line 13

Insert: "youth care facility"

9. Page 3, line 21.

Following: "IS"

Strike: "A RESIDENT OF A YOUTH FOSTER HOME OR YOUTH GROUP HOME"

Insert: "receiving services from a youth care facility"

10. Page 3, line 22.

Following: "or"

Strike: ","

Insert: "or"

Following: "service"

Strike: ", OR HOME"

- END -

HOUSE BILL NO. 514

INTRODUCED BY CAFERRO, HENRY, RASER, CAMPBELL, JUNEAU, WILLIAMS, HANDS, SANDS,
 ANKNEY, AUGARE, BERGREN, BRANAE, COHENOUR, DICKENSON, DRISCOLL, ERICKSON, FRENCH,
 FUREY, HAMILTON, HEINERT, HOLLENBAUGH, KLOCK, KOTTEL, MUSGROVE, NOONAN, PHILLIPS,
 POMNICHOWSKI, REINHART, SMALL-EASTMAN, THOMAS, VAN DYK, VILLA, WARD, WILMER,
 WILSON, WISEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SEXUAL ASSAULT AND SEXUAL INTERCOURSE
 WITHOUT CONSENT LAWS TO PROVIDE THAT CONSENT IS NOT EFFECTIVE IF THE VICTIM IS
 RECEIVING SERVICES FROM A YOUTH CARE FACILITY OR IS
 RECEIVING COMMUNITY SERVICES OR IS A PATIENT IN OR A RESIDENT OF A MENTAL HEALTH
 FACILITY, A RESIDENTIAL FACILITY, ~~A FOSTER HOME, A YOUTH GROUP HOME,~~ OR A
 COMMUNITY-BASED FACILITY OR IS A RECIPIENT OF COMMUNITY-BASED SERVICES AND THE
 PERPETRATOR IS AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE FACILITY OR
 COMMUNITY-BASED SERVICE; PROVIDING A LIMITED MARRIAGE EXCEPTION; AND AMENDING
 SECTIONS 45-5-501 AND 45-5-502, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definition. (1) As used in 45-5-503, the term "without consent" means:

(a) the victim is compelled to submit by force against the victim or another; or

(b) subject to subsection (3), the victim is incapable of consent because the victim is:

(i) mentally defective or incapacitated;

(ii) physically helpless;

(iii) overcome by deception, coercion, or surprise;

(iv) less than 16 years old; or

(v) incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator
 is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim,
 unless the act is part of a lawful search; or

services from a youth care facility, as
 (VI) RECEIVING COMMUNITY SERVICES OR IN A YOUTH FOSTER HOME OR YOUTH GROUP HOME, AS THOSE TERMS

① ~~ARE DEFINED IN 52-2-602, AND THE PERPETRATOR:~~

2 (A) HAS SUPERVISORY OR DISCIPLINARY AUTHORITY OVER THE VICTIM OR IS PROVIDING TREATMENT TO THE
3 VICTIM; AND

4 (B) IS AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE ^{youth care facility} ~~COMMUNITY-BASED SERVICE, YOUTH FOSTER HOME,~~

5 ~~OR YOUTH GROUP HOME; OR~~

6 ~~(vi)(vii)~~ admitted to a mental health facility, as defined in 53-21-102, admitted to a community-based
7 facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services,
8 as defined in 53-20-102, and the perpetrator:

9 (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

10 (B) is an employee, contractor, or volunteer of the facility or community-based service.

11 (2) As used in subsection (1), the term "force" means:

12 (a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a
13 forcible felony by the offender; or

14 (b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the
15 offender has the ability to execute the threat.

16 (3) ~~Subsection~~ SUBSECTIONS (1)(b)(vi) ~~does~~ AND (1)(B)(vii) DO not apply if the individuals are married to
17 each other and one of the individuals involved is a patient in or resident of a facility or, is a recipient of

18 ^{receiving services from a youth care facility} ~~community-based services, OR IS A RESIDENT OF A YOUTH FOSTER HOME OR A YOUTH GROUP HOME and the other~~

19 ^{OR} ~~individual is an employee, contractor, or volunteer of the facility or community-based service, OR HOME."~~

21 **Section 2.** Section 45-5-502, MCA, is amended to read:

22 **"45-5-502. Sexual assault.** (1) A person who knowingly subjects another person to any sexual contact
23 without consent commits the offense of sexual assault.

24 (2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the county
25 jail for a term not to exceed 6 months, or both.

26 (3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if
27 the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be
28 punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless
29 the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a
30 term of less than 4 years, or more than 100 years and may be fined not more than \$50,000.

1 (4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight
2 after the attempt or commission.

3 (5) (a) ~~Consent~~ Subject to subsection (5)(b), consent is ineffective under this section if the victim is:

4 (a)(i) ~~the victim is~~ incarcerated in an adult or juvenile correctional, detention, or treatment facility and the
5 perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority
6 over the victim, unless the act is part of a lawful search; or

7 (b)(ii) ~~the victim is~~ less than 14 years old and the offender is 3 or more years older than the victim; or

8 ~~(iii) RECEIVING COMMUNITY SERVICES OR IS IN A YOUTH FOSTER HOME OR A YOUTH GROUP HOME, AS THOSE~~
9 ~~TERMS ARE DEFINED IN 52-2-602, AND THE PERPETRATOR:~~

10 (A) HAS SUPERVISORY OR DISCIPLINARY AUTHORITY OVER THE VICTIM OR IS PROVIDING TREATMENT TO THE
11 VICTIM; AND

12 (B) IS AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE ~~YOUTH FOSTER HOME, YOUTH GROUP HOME, OR~~
13 ~~COMMUNITY-BASED SERVICE; OR~~ *youth care facility*

14 (iii)(iv) admitted to a mental health facility, as defined in 53-21-102, admitted to a community-based facility
15 or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as
16 defined in 53-20-102, and the perpetrator:

17 (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

18 (B) is an employee, contractor, or volunteer of the facility or community-based service.

19 (b) ~~Subsection~~ SUBSECTIONS (5)(a)(iii) ~~does~~ AND (5)(A)(IV) DO not apply if the individuals are married to
20 each other and one of the individuals involved is a patient in or resident of a facility or, is a recipient of
21 community-based services, OR IS ~~A RESIDENT OF A YOUTH FOSTER HOME OR YOUTH GROUP HOME~~ *receiving services from a youth care facility* and the other

22 individual is an employee, contractor, or volunteer of the facility ~~or community-based service, or none.~~ *OR*
23

- END -